

ORIGINAL COPY

Altus

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Crystallization Development Agreement

This Agreement, having an effective date of December 08, 1999 ("Effective Date"), is entered into by and between Altus Biologics Inc., 625 Putnam Avenue, Cambridge, MA 02139-4807 ("Altus"), and Cubist Pharmaceuticals, 24 Emily Street, Cambridge, MA 02139, hereinafter "Cubist".

WHEREAS, Altus engages in the business of, among other things, using proprietary crystallization technologies for the development and purification of proteins, peptides and their derivatives.

WHEREAS, Cubist desires to use Altus' proprietary crystallization technology and will supply Daptomycin to Altus in order for Altus to attempt to develop one or more processes for preparing high purity, crystalline Daptomycin in accordance with this development agreement.

NOW THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Agreement, the parties agree as follows:

1. Project: Altus will use reasonable best efforts, as outlined in Appendix A, to develop one or more processes to produce crystalline Daptomycin with a purity of at least 98%, starting from the highest purity of daptomycin raw material currently available (Phase I) and potentially progressing to the development of one or more processes to produce crystalline Daptomycin with a purity of at least 98%, starting from daptomycin starting material of quality < 90% purity (Phase II) (hereinafter referred to as the "Project"). Pending a successful outcome in achieving the minimum target specification of crystalline daptomycin of 98% purity, Cubist will have the right to acquire Altus Material, Altus' technology, the data and know how generated while conducting this study and intellectual property assets for the crystallization of Daptomycin as discussed in Section 3.

2. Project Funding: Cubist shall pay Altus \$48,000 for the initial crystallization work described in Section 1. as Phase I. In consideration for this funding by Cubist, Altus will devote a minimum of eight man-weeks to the project. Altus may elect to continue funding beyond the initial eight weeks, at Altus' sole discretion. Project funding by Cubist shall be payable to Altus, in U.S. Dollars, within thirty days from the project start date.

3. Milestone Payments: If Altus successfully develops a crystallization process for Daptomycin meeting the target specification, Altus will provide samples and process methodology to Cubist. Cubist will then have ninety days (90) after delivery of Altus' sample and information to reproduce and verify Altus' results or dispute the finding. Within ninety days (90) after Cubist receives the sample and confirms Altus' results, Cubist shall make the following process development milestone payments to Altus:

Starting Material Quality	Target/Outcome	Phase	Milestone
Highest Purity Available	<u>Crystalline material of daptomycin ≥ 98%</u>	I	\$100,000
Current Grade - < 90% Purity	Purity Two-step crystallization to achieve crystalline material of daptomycin ≥ 98% Purity	II	Additional \$200,000

Upon payment by Cubist to Altus for achieving either of the two milestones shown above, Cubist will have exclusive rights with right to sublicense to the Altus Material and data and know how information disclosed as outlined in Section 8. Cubist shall not supply the Daptomycin crystals or any other Altus Material or information provided or developed hereunder to any third party without the prior written consent of the other party, until rights are obtained from Altus as outlined above.

4. Other Payments: If Cubist elects to utilize Altus' proprietary information and technology developed under this agreement for any clinical studies or other commercial purposes and the following milestones are achieved, Cubist will make the following milestone payments:

Milestone Activity	Utilizing Process Phase I described in Section 1.	Utilizing Process Phase II described in Section 1.
NDA Filing (or equivalent)	\$250,000 Payment	Additional \$250,000
Commercial Launch	1% Royalty	Additional 1% Royalty

Payment for the NDA filing or equivalent will be made by Cubist to Altus on the effective date of each activity. Royalty payments for commercial launch of product will be paid for so long as the manufacture, use or sale of product is covered by a claim of an issued and unexpired patent which is dependant upon the Altus technology and/or data generated from the Project and which patent has not been withdrawn, canceled, revoked, disclaimed, or held invalid, unenforceable or unpatentable by a final and unappealed or unappealable judgment or decision of a court of competent jurisdiction. Royalty payments will be made within 30 days after the end of each calendar quarter and will be calculated upon net sales of final drug substance sold by Cubist or its licensees in an arms length transaction to third parties.

5. Raw Materials: Cubist shall deliver or have delivered to Altus, at Cubist's sole expense, for use by Altus in the Project each of the following (collectively, the "Raw Materials"):

- 50 grams of Daptomycin with the highest purity available
- 50 grams of current grade Daptomycin with purity less than 90%

Together with relevant Certificate of Analyses, analytical methods and Material Safety Data Sheets, Altus shall be responsible for the procurement, proper quality and documentation of all other supplies, raw materials and reagents used in the Study. All Raw Materials supplied to Altus by Cubist shall be the property of Cubist and shall be returned to Cubist at the end of the project.

6. Material Transfer:

6.1 For purposes of this Agreement, the parties will exchange material. "Cubist Material" shall mean the Raw Materials and any other material received by Altus from Cubist. "Altus Material" shall mean any material received by Cubist from Altus.

6.2 The party receiving Material hereunder (the "Receiving Party") shall not distribute or release the other party's (the "Disclosing Party's") Material to anyone other than the Receiving Party's laboratory personnel, and shall make sure that no one will be allowed to take or send such Material to any location other than that to which it is sent by the Disclosing Party, unless prior written permission is obtained from the Disclosing Party.

6.3 The Receiving Party will promptly inform the Disclosing Party of relevant research results related to the Disclosing Party's Material by personal written communication. Notwithstanding anything to the contrary contained in this Agreement, both parties shall maintain in strict confidence all information with respect to the Altus Material, including the results of the Study and the results of Cubist's evaluation of the Altus Material, and will not disclose that information to any third party, nor use the same for their own benefit or the benefit of any third party; provided, however, that the foregoing shall not apply to any such information (a) which is in the public domain; (b) which becomes part of the public domain by publication or otherwise, except by breach of this Agreement; or (c) which is rightfully disclosed to the Receiving Party by a third party who did not receive such information from the Disclosing Party under an obligation of confidentiality.

6.4 The Receiving Party shall not use the Disclosing Party's Material for any purpose other than for performing the Study and evaluation of the results of the Study as specifically set forth herein, without the

prior written consent of the Disclosing Party. Without limiting the generality of the foregoing, the Receiving Party shall not perform any analysis of the structure of the Disclosing Party's Material.

6.5 The Receiving Party shall have no rights to the Disclosing Party's Material other than as provided in this Agreement, and at the request of the Disclosing Party at any time, the Receiving Party will return to the Disclosing Party any of its unused Material.

6.6 The Material is made available only for investigational use in laboratory animals or for in vitro experiments. Neither the Material nor any biological materials treated therewith will be used in human beings or for any other purposes not specifically referenced in this Agreement. The parties will use the Material in compliance with all applicable governmental regulations.

7. Confidentiality: All information received by the Receiving Party from the Disclosing Party ("Information") shall be and remain the sole property of the Disclosing Party. Such information may be in tangible or intangible form, including, but not limited to: oral disclosures, ideas, know-how, written disclosures, documents, drawings, graphs, plans, specifications, models, samples equipment, data, formulas, processes, designs, hardware, software and plans relating to research, development and business. The Receiving Party shall maintain as confidential all of the Disclosing Party's Information and shall limit access to the Disclosing Party's Information to only those persons who, under the Receiving Party's direct control, will be engaged in employing such Information for the purposes of fulfilling the Receiving Party's obligations under this Agreement. At no time shall the Disclosing Party's Information be employed for any purpose other than as described herein or disclosed or provided to any third party without the prior written consent of the Disclosing Party. The foregoing obligation shall not apply to the Disclosing Party's Information (a) which was known to the Receiving Party prior to this Agreement as evidenced by its written records, except Information which was known to the Receiving Party as a result of prior confidential disclosures to the Receiving Party by the Disclosing Party or work performed by the Disclosing Party for the Receiving Party; (b) which is or becomes generally available to the public by use, publication or the like, through no fault of Receiving Party; or (c) which is disclosed to Receiving Party by a third party who has the legal right to disclose such Information. If the Receiving Party is required by law to disclose any Disclosing Party's Information to an authorized government agency or to any other party, the Receiving Party shall immediately notify the Disclosing Party of all details of the request prior to any disclosure.

8. Intellectual Property: Cubist will have the right to acquire Altus Materials, Altus' technology, data, know how and intellectual property assets, including patent rights with respect thereto, developed under this agreement, subsequent to the payment by Cubist of either of the milestone payments outlined in Section 3. Subject to Cubist's reasonable best efforts to diligently commercialize the technology and make payments as outlined in Section 3 and 4, Altus agrees that Cubist will own and have unrestricted free right to use for all purposes the Altus Materials, Altus' technology and intellectual property assets, including patent rights with respect thereto, the data and protocols for crystallization developed under this agreement created for Cubist as part of the Project, as well as any invention conceived or made solely by one or more employees of Altus or jointly by one or more employees of Altus and one or more employees of Cubist in connection with performance of Project (collectively, the "Intellectual Property"). Altus shall promptly notify Cubist of any Intellectual Property which is conceived or made solely by one or more employees of Altus or jointly by one or more employees of Altus and one or more employees of Cubist in connection with performance of the Project. Upon receipt of either of the milestone payments in Section 3., Altus hereby assigns to Cubist all of Altus' rights to, and interest in, the Intellectual Property. Subject to Cubist's reasonable best efforts to diligently commercialize the technology and make payments as outlined in Section 3 and 4, Altus agrees to assist Cubist, at Cubist's expense, in preparing and prosecuting patent applications and patent extensions or in obtaining or maintaining other forms of intellectual property rights protection on any Intellectual Property which Cubist elects to protect. Altus acknowledges that all persons performing Services under this Agreement have assigned their rights in any Intellectual Property to Altus. Cubist will be responsible for all patent filings and associated legal expenses. Cubist shall retain exclusive ownership rights to the Daptomycin, including without limitation any intellectual property rights, including patent rights with respect thereto. Without limiting the generality of the foregoing, neither party shall file any patent application containing any claim the subject matter of which is derived from the other party's

Information or Material, including without limitation any patent application claiming the Daptomycin crystal, without the prior written consent of the other until after Cubist receives such Information and Material from Altus.

9. Liability: Altus shall use its reasonable best efforts to conduct the Project hereunder in accordance with applicable professional standards. EXCEPT AS EXPRESSLY SET FORTH ABOVE, ALTUS MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Without limiting the generality of the foregoing, it is understood and agreed that the Altus Material is experimental in nature, and Altus makes no guarantee that the Project will be successful. Altus' liability for any breach of its warranty hereunder shall be limited to the amount paid to it under this Agreement, and in no event shall Altus be liable for any indirect, incidental or consequential loss or damage of any nature whatsoever, including without limitation, any loss of profits, or for any use made by Cubist of the results of the Project performed by Altus hereunder. NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY THAT THE USE OF ITS MATERIAL WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT. In no event shall the Disclosing Party be liable for any use by the Receiving Party of the Disclosing Party's Material or for any loss, claim, damage or liability, of whatsoever kind or nature, which may arise from or in connection with the use, handling, storage or disposal of such Material by the Receiving Party, and the Receiving Party will indemnify the Disclosing Party against any claims arising in connection therewith.

10. Independent Contractor: The relationship between Altus and Cubist created by this Agreement is one of independent contractors and not agents or employees and neither party shall have the power or authority to bind or obligate the other except as expressly set forth in this Agreement.

11. Names: Each party agrees that it will not use the name of the other party or any of its personnel for promotional literature or advertising without the prior written approval of the other party.

12. Termination: Upon written notice to Altus, Cubist shall have the right to terminate this Agreement at any time. Such termination shall not relieve Cubist of its obligations under this Agreement. Altus may terminate this Agreement at any time if Cubist fails to perform any material obligation, covenant, condition, or limitation therein, provided Cubist shall not have remedied its failure within sixty (60) days after receipt of written notice from Altus of such failure. Any rights or obligations, which by their nature are intended to survive termination of this Agreement, shall survive such termination.

13. Assignment: Neither party shall be entitled to assign this Agreement, in whole or in part, without the prior written consent of the other party (which shall not be unreasonably withheld) except as part of an assignment of the entire business to which this Agreement relates.

14. Waiver: No waiver of any term, provision or condition of this Agreement whether by conduct or otherwise in any one or more instances shall be deemed to be construed as a further or continuing waiver of any such term, provision or condition or of any other term, provision or condition of this Agreement.

15. Choice of Law: This Agreement shall be governed by and interpreted in accordance with the substantive laws of Massachusetts and the parties hereby submit to the jurisdiction of the Massachusetts courts.

16. Merger: This Agreement is the entire agreement between Altus and Cubist regarding the subject matter hereof, and it is agreed that no modifications of this Agreement shall be effective unless agreed to in writing by authorized representatives of both parties.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

Altus Biologics Inc.

By: Peter Jancar

Name: Peter Jancar

Title: President

Cubist Pharmaceuticals, Inc.

By: Laura K. Wilson

12/11/99

Name: Susan Whang

Title: Senior Director, Scientific Licensing

APPENDIX A

Project Activities	Performed by Altus	Performed by Cubist
Initial Purification of Daptomycin		X
Initial Screening of Conditions	X	
Scale Up to Micro-batch (200mgs - 1 gram)	X	
Sample Preparation/Initial Report	X	
Crystal Evaluation	X	X
Process Scale Up (5 grams - 50 grams)	X	
Sample Preparation/Final Report	X	
Crystal Evaluation	X	X

Note: Same activities will be conducted for each starting material selected.

EXHIBIT A